



Attorney General
STATE CAPITOL
Phoenix, Arizona 85007

Robert R. Corbin

June 26, 1980

LAW LIBRARY
ARIZONA ATTORNEY GENERAL

Mr. Sam Mardian
Commission on Salaries for Elective
State Officers
3815 North Black Canyon Highway
Phoenix, AZ 85015

Re: I80-116 (R80-135)

Dear Mr. Mardian:

In your letter of June 11, 1980, you asked whether the Commission on Salaries for Elective State Officers (the "Commission") has the authority to recommend as a salary for state legislators only a daily rate of pay for a precisely limited number of days during a calendar year. We think that this type of recommendation is outside the scope of authority of the Commission and is thus unconstitutional.

Article 5, § 13 of the Arizona Constitution provides in pertinent part:

The salaries of those holding elective state offices shall be as established by law from time to time. . . . [L]egislative salaries may be altered only by the procedures established in this section.

. . . At such times as may be directed by the legislature, the commission shall report to the governor with recommendations concerning the rates of pay of elected state officers. . . . The recommendations of the commission as to legislative salaries shall be certified by it to the secretary of state. . . .

Article 4, pt. 2, § 21 of the Constitution provides that the term of office of members of the Legislature shall be two years. Article 5, § 13 appears to indicate that the Commission is authorized to establish a salary for the term of office of a legislator. A limitation on the number of days for which a legislator receives compensation would necessarily set a salary for less than the term of office. Since the term of office is defined on the basis of years, payment of salary on an annual basis is intended. See Cochise County v. Wilcox, 14 Ariz. 234, 127 P. 758 (1912).

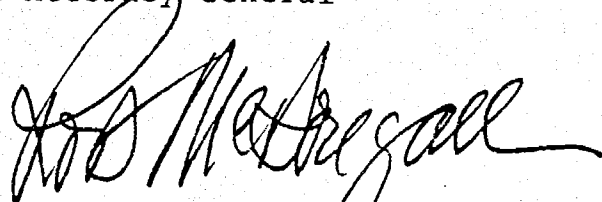
Mr. Sam Mardian
June 26, 1980
Page 2

It is clear that the Commission is authorized to recommend a dollar figure for a salary. The only reason a recommendation would state that an amount is to be paid for only a specified number of days is to try to influence the number of days the Legislature meets. Inasmuch as Article 5, § 13 does not authorize the Commission to do anything other than set a salary, the Commission may not exercise by indirection a power which it has not been expressly granted. Miners & Merchants Bank v. Board of Supervisors of Cochise County, 55 Ariz. 357, 101 P.2d 461 (1940); Caldwell v. Board of Regents of U. of A., 54 Ariz. 404, 96 P.2d 401 (1939).

We note that nothing in the express terms of this constitutional provision appears to preclude the Commission from recommending an annual salary and then further specifying the rate at which that salary shall be paid. We reiterate, however, that the rate cannot be set solely for the purpose of limiting the legislative session.¹

Sincerely,

BOB CORBIN
Attorney General



RODERICK G. MCDOUGALL
Chief Assistant
Attorney General

BC:LPS:lfc

1. Moreover, if the salary is paid out at a rate other than on an annual basis, questions may arise in the situation where a legislator assumes the office after the entire salary has been paid.